



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-1044]

RIN 1625-AA00

Safety Zone; Shore (Belt) Parkway Bridge Construction, Mill Basin; Brooklyn, NY

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of Mill Basin surrounding the Shore (Belt) Parkway Bridge. This rule allows the Coast Guard to prohibit all vessel traffic through the safety zone during bridge replacement operations, both planned and unforeseen, that could pose an imminent hazard to persons and vessels operating in the area. This rule is necessary to provide for the safety of life in the vicinity of the construction of the new Shore (Belt) Parkway Bridge and demolition of the old Shore (Belt) Parkway Bridge.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2014-1044 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Jeff Yunker, Coast Guard Sector New York Waterways Management Division, U.S. Coast Guard 718-354-4195, email Jeff.M.Yunker@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
E.O.	Executive order
FR	Federal Register
LNМ	Local Notice to Mariners
nm	Nautical miles
NPRM	Notice of proposed rulemaking
NYC DOT	New York City Department of Transportation
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On Friday, March 13, 2015 the Coast Guard published a NPRM titled, “Safety Zone; Shore (Belt) Parkway Bridge Construction, Mill Basin, Brooklyn, NY” in the Federal Register (80 FR 13309). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this bridge construction. During the comment period that ended May 12, 2015, we received one comment. No public meetings were requested or held.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1. The COTP New York has determined that potential hazards associated with the bridge construction may occur within a 200-yard radius of the bridge. The purpose of this rule is to ensure safety of vessels, workers, and the navigable waters in the safety zone associated with the

bridge construction operations.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published March 13, 2015. In response, there are two changes in the regulatory text of this rule from the published NPRM.

A representative of Miramar Yacht Club, located on Sheepshead Bay, NY, submitted a comment identifying nine issues to the proposed rulemaking. Many of the omissions cited by Miramar Yacht Club occurred due to the limited construction schedule timeline in possession of the Coast Guard at the time the proposed rulemaking was published. The nine issues are as follows:

1. Failure to require entry and egress to Mill Basin at least 3-4 days every week during daylight hours.

Access to Mill Basin will be provided daily during daylight hours. The existing work plan will only require an approximate 30-minute channel closure, approximately July through August, during steel erection. This is similar to the steel erection procedures and channel closures in use at the Shore (Belt) Parkway Bridge replacement project over Gerritsen Inlet, approximately 1.2 nm to the southwest. Upon completion of the new bridge, channel closures during demolition of the existing bridge are scheduled during the winter of 2016-2017. NYC DOT must still submit channel closure requests to USCG Sector New York for final approval. Enforcement times may last longer than 30 minutes during demolition of the existing Shore (Belt) Parkway Bridge.

2. Failure to ensure that entry and egress to Mill Basin is available in advance of a named storm in order to take refuge and be hauled out at a boat yard.

Entry and egress to Mill Basin will be available in advance of a named storm.

3. Failure to require at least two weeks prior notice of pending closures to Mill Basin

users.

NYC DOT will provide at least two weeks' notice prior to pending channel closures.

NYC DOT has established a community relations liaison position for this project as they have for the Shore (Belt) Parkway Bridge replacement project over Gerritsen Inlet. Persons requesting to be added to the liaison's notification list for project updates may email

SevenBeltBridgesOutreach@gmail.com or call 347-702-6430 extension 114. Additional project information is available at <https://www.facebook.com/beltparkway> and

http://www.nyc.gov/html/dot/downloads/pdf/beltpkwybrgs_eng.pdf.

4. Failure to prohibit or significantly limit closures from May through October during high recreational traffic in Mill Basin.

In actuality, channel closures are limited during this project. See our response in paragraph 1 above.

5. Failure to restrict NYC DOT operations which create or are at risk of creating an imminent hazard to Mill Basin users or limit vessel access when vessel traffic is least affected.

In actuality, channel closures are limited during this project. See our response in paragraph 1 above.

6. Failure to require NYC DOT to establish and maintain a construction schedule which minimizes and mitigates interference with vessel access to, from, and through Mill Basin.

In actuality, channel closures are limited during this project. See our response in paragraph 1 above. In addition, the USCG Bridge Permit 5-09-1 requires that, "All work shall be so conducted that the free navigation of the waterway is not unreasonably interfered with and the present navigable depths are not impaired. Timely notice of any and all events that may affect navigation shall be given to the District Commander during construction of the bridge".

7. Failure to address the fact that NYC DOT operations are subordinate to the USCG's obligations to keep access to the navigable waterways of the United States free from obstruction and interference and not vice-versa.

The bridge is being constructed under the authority of a bridge permit issued by the USCG. The safety zone is being established under the Federal authorities listed in the Regulatory text. NYC DOT must still submit channel closure requests to USCG Sector New York for final approval. However, USCG Bridge Permit 5-09-1 states, "Issuance of this permit does not relieve the permittee of the obligation or responsibility for compliance with the provisions of any other law or regulation as may be under the jurisdiction of any federal, state or local authority having cognizance of any aspect of the location, construction or maintenance of said bridge".

8. Failure to require the least burdensome restriction of access possible.

See our response in paragraphs 1 and 6 above as to how channel closures are limited during this project.

9. Failure to have a "sun set" provision in the rule which clarifies the temporary right to direct Mill Basin waterway closures.

As stated in the NPRM (Discussion of Proposed Rule), the current construction completion date for the Shore (Belt) Parkway Bridge Replacement work over Mill Basin is 2021. Not publishing a contract completion date in the Regulatory text allows the USCG to enforce the safety zone if there are any unforeseen circumstances that prevents the contractors from finishing the project on time. If a contract completion date ("sun set provision") was published in the Regulatory text and the project was not completed on time, then publication of an additional Temporary Final Rule would have been required that in all likelihood would not have provided a public comment period. Once the bridge project is complete, the USCG will disestablish this

regulation via a Direct Final Rule.

As a result of the comment we received, we are making the following two changes to the regulatory text:

1. This regulation is assigned the permanent section number of 33 CFR 165.161, instead of the temporary section number of 33 CFR 165.T01-1044 as published in the NPRM. This is because we did not provide a project completion date in the regulatory text in case the project is not completed on time. We will disestablish this permanent rule by publishing a Direct Final Rule upon project completion.
2. The Enforcement Periods notification regulations proposed in § 165.161(c)(2) of the NPRM is revised to the standard notification requirement listed in 33 CFR 165.7. The two week notification process for channel closures does not allow sufficient time for us to draft, review, and obtain the COTP's signature, and have the Notification of Enforcement published in the **Federal Register** at least 30 days prior to each channel closure.

This rule establishes a safety zone on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The safety zone will cover all navigable waters within 200 yards of the Shore (Belt) Parkway Mill Basin Bridge. The duration of the zone is intended to ensure the safety of vessels, workers, and the navigable waters in the safety zone associated with the bridge construction and demolition operations. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s)

related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. This safety zone will impact a small designated area of Mill Basin for approximately 30 minute intervals during weekdays when vessel traffic is normally low. Safety zone enforcement times may be longer during demolition operations of the old Shore (Belt) Parkway Bridge. Moreover, the Coast Guard will issue a District One Local Notice to Mariners (LNM) via <http://www.navcen.uscg.gov/?pageName=lnmMain> about the zone. In addition, NYC DOT has established a community liaison to notify affected mariners about this project. Persons requesting to be added to the liaison’s notification list for project updates may email SevenBeltBridgesOutreach@gmail.com or call 347-702-6430 extension 114.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental

jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively

have a significant effect on the human environment. This rule involves a safety zone lasting less than 30 minutes during steel erection that will prohibit entry within 200 yards of the Shore (Belt) Parkway Bridge over Mill Basin. Enforcement times may last longer than 30 minutes during demolition of the old Shore (Belt) Parkway Bridge. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination will be available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREA

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.161 to read as follows:

§165.161 Safety Zone; Shore (Belt) Parkway Bridge Construction, Mill Basin, Brooklyn, NY.

(a) Location. The following area is a safety zone: All waters from surface to bottom of Mill Basin within 200 yards of the Shore (Belt) Parkway Mill Basin bridge, east of a line drawn from 40°36'24.29"N, 073°54'02.59"W to 40°36'11.36"N, 073°54'04.69"W, and west of a line drawn from 40°36'21.13"N, 073°53'47.38"W to 40°36'11.59"N, 073°53'48.88"W.

(b) Definitions. The following definitions apply to this section:

(1) Designated representative. A “designated representative” is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port (COTP) New York, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official patrol vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(c) Enforcement periods. (1) This safety zone is in effect permanently starting [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], but will only be enforced when deemed necessary by the COTP.

(2) The COTP will rely on the methods described in §165.7 to notify the public of the enforcement of this safety zone. Such notifications will include the date and times of enforcement, along with any pre-determined conditions of entry.

(d) Regulations. (1) The general regulations contained in §165.23, as well as the regulations in paragraphs (d)(2) and (3) of this section, apply.

(2) During periods of enforcement, all persons and vessels must comply with all orders and directions from the COTP or a COTP's designated representative.

(3) During periods of enforcement, upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of the vessel must proceed as directed.

Dated: November 24, 2015.

M. H. Day,
Captain, U.S. Coast Guard,
Captain of the Port New York.

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